DOCUMENT RESUME

ED 306 731 EC 212 795

AUTHOR Baumgart, Diane; And Others
TITLE Community-Based Vocational Training Field Manual. A Guide for Interpreting State and Federal Wage Hour Guidelines, Insurance Coverage, and Development of Community Sites for Students with Mild, Moderate, or Severe Handicaps. Secondary Transition and Employment Project: STEP.
INSTITUTION Idaho Univ., Moscow. Dept. of Special Education.
SPONS AGENCY Idaho State Council on Developmental Disabilities.; Office of Special Education and Rehabilitative Services (ED), Washington, DC.
PUB DATE 87
GRANT G00-843-0013
NOTE 110p.; For related documents, see EC 212 791-801.
PUB TYPE Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC05 Plus Postage.
DESCRIPTORS *Disabilities; *Education Work Relationship; Federal Legislation; Insurance; *Labor Legislation; Program Development; Secondary Education; *Staff Development; State Legislation; *Transitional Programs; Vocational Education; Work Experience Programs

ABSTRACT

The guide, developed by the Secondary Transition and Employment Project (STEP) in Idaho, is intended for agency or school staff developing a community-based vocational training program for persons with mild, moderate, or severe disabilities. The guide is intended to be used with three available video tapes. The first module's goal is the understanding and proper application of the state and federal wage hour guidelines. Sample sub-goals include determining if an employer-employee relationship exists and assessing a worker's productivity and pay rate. Module II involves understanding and properly applying insurance guidelines with such subgoals as: determining the extent and type of insurance coverage provided under the agency's current policy, and determining the student or adult is covered by the business' insurance. The third module stresses the delineation of strategies for developing training sites or work stations in the following sub-goals: distinguishing between a work station, work assignment, and job placement; evaluating each site with respect to worker integration, training required, number of placements per site, and availability of similar employment in the community; and developing a short presentation and/or handout on the agency/school's community-based vocational training program. Appendixes include such texts as: "Employment Relations Under the Fair Labor Standards Act" and "Regulations, Part 524. Special Minimum Wages for Handicapped Workers in Competitive Employment." (DB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED306731

COMMUNITY-BASED VOCATIONAL TRAINING FIELD MANUAL

A guide for interpreting State and Federal Wage Hour Guidelines, Insurance Coverage, and Development of Community Sites for students with mild, moderate, or severe handicaps

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

By:

Diane Baumgart
Dan Perino
Keith Hyatt

EC212795

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Diane Baumgart

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

BEST COPY AVAILABLE

COMMUNITY-BASED VOCATIONAL TRAINING FIELD MANUAL

A guide for interpreting State and Federal Wage Hour Guidelines, Insurance Coverage, and Development of Community Sites for students with mild, moderate, or severe handicaps.

BY

Diane Baumgart, Ph.D.
Daniel M. Perino
Keith J. Hyatt

Secondary Transition and Employment Project
University of Idaho
Department of Special Education
Moscow, ID 83843
208-885-6159

©STEP, 1987

This project was supported in part by Grant G00-843-0013 from the U.S. Deparment of Education, Office of Special Education and Rehabilitation Services and the Idaho State Council on Developmental Disabilities.

Table of Contents

Page

Overview 1

Modules

I. Goal I: Understand and properly apply the state and federal wage hour guidelines 2

II. Goal II: Understand and properly apply insurance guidelines 15

III. Goal III: Identify and utilize strategies for developing sites 25

Reading List 58

Appendix A — Employment Relations Under the Fair Labor Standards Act. WH Pubication 1297 60

Appendix B — Regulations, Part 524. Special Minimum Wages for Handicapped Workers in Competitive Employment. WH Publication 1316 70

Apendix C — Handy Reference Guide to the Fair Labor Standards Act. WH Publication 1282 76

Appendix D — A Guide to Idaho Labor Laws 83

Appendix E — Form 9010 for Measuring Productivity and Form WH222 - Application for Handicapped Worker Certificate 94

NOTE: We recommend the purchase of the three accompanying video tapes for $10.95 each: Federal and State Wage and Hour Regulations, Use of the Subminimum Wage Certificate, and Insurance and Liability Issues. The tapes are available from STEP, College of Education, University of Idaho, Moscow, ID 83843. (208) 855-6159.

Overview

The modules in this manual are designed to accomplish the following goals and objectives:

Module I. Understand and properly apply the state and federal wage hour guidelines.

1. Determine if an employer-employee relationship exists.
2. Assess a worker's productivity and pay rate.
3. Apply for subminimum wage certificates.
4. Determine if a business is covered by federal or state regulations.

Module II. Understand and properly apply insurance guidelines.

1. Determine the extent and type of insurance coverage provided under the agency's current policy.
2. Determine the extent of coverage offered by supplemental medical policies.
3. Determine if the student or adult is covered by the business' insurance.

Module III. Delineate strategies for developing training sites or work stations.

1. Distinguish between a Work Station, Work Assignment, and Job Placement.
2. Evaluate each site with respect to worker integration, training required, number of placements per site, and availability of similar employment in the community.
3. Use eight different strategies for identifying possible training sites in businesses.
4. Develop a short presentation and/or handout on your agency/school's community-based vocational training program.
5. Contact an employer, arrange for an interview, and present the community-based vocational training program.

Learner activities are presented for each objective, and appropriate handouts and forms are provided.

MODULE I

Understand and Properly Apply the State and Federal Wage Hour Guidelines

MODULE I

Introduction

During recent years public school and adult agency personnel have developed and implemented vocational training programs for persons with disabilities by utilizing work stations in the community. One of the most complex and confusing issues associated with the use of community work stations is the U. S. Department of Labor guidelines, Wage and Hour Division. Common questions regarding the guidelines include:

1. When are employers required to pay adults for work performed?
2. Who provides insurance coverage?

The answers to these questions are not always clearly defined and require the interpretation of both state and federal wage and hour regulations. The regulations which govern the type of sites that can be used are contained in several publications of the U. S. Department of Employment Standards Administration, Wage and Hour Division. The following module was developed to help facilitate the correct interpretation and application of these guidelines.

Goal I and Objectives

Goal I. Understand and properly apply the state and federal wage hour guidelines.

Objectives:

1. Determine if an employer-employee relationship exists.
2. Assess a worker's productivity and pay rate.
3. Apply for subminimum wage certificates.
4. Determine if a business is covered by federal or state regulations.

Learner Activities for Goal I, Objective 1

Determine if an employer-employee relationship exists.

(a) Read U. S. Department of Labor Employment Standards Administration, Wage and Hour Division, WH Publication 1297, Revised March 1979, Trainees, page 4-5 (Appendix A).

(b) Review the following handout entitled "The Six Critical Criteria."

(c) Watch the video tape entitled Federal and State Wage and Hour Regulations.

(d) Complete the worksheet entitled "Determination of Paid and Nonpaid Work Stations."

Goal I
Objective 1
Learner Activity (b)

The Six Critical Criteria

If **one** of the following criteria is **NOT** met, the worker should be considered an employee and should be paid.

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

2. The training is for the benefit of the trainees;

3. The trainee does not displace regular employees, but works under their close observation;

4. The employer that provides the training derives no immediate advantage from the activities of the trainee; and on occasion his/her operations may actually be impeded;

5. The trainee is not necessarily entitled to a job at the conclusion of the training period;

6. The employer and the trainee understand that the trainee is not entitled to wages for the time spent in training.

Learner Activity for Goal I, Objective 2

Assess a worker's productivity and pay rate.

(a) Review the following handout entitled "Assessing Productivity."

(b) Watch the video tape entitled "Use of the Subminimum Wage Certificate."

(c) Complete the worksheet entitled "Conducting a Time Study."

Goal I
Objective 2
Learner Activity (b)

Assessing Productivity

To measure a person's productivity the following activities must be completed:

The first task is to develop a set of "norms," a standard against which to compare a worker's performance. The norms reflect the actual time it takes a skilled worker to perform the job task and the level of quality required. A minimum of three skilled workers should be used to develop the norms; and ideally, the job task should be clearly measurable in terms of quantity and quality. A predetermined amount of time should be used to measure the quantity of work completed. An example of this is an adult who works in a commercial laundry folding towels. The adult works 8 hours a day pulling towels out of a storage bin and folding and stacking them in piles of 10. Your norm would represent the number of towels typically folded and stacked within a 15-minute period. To develop the norms, complete the following activities.

1. Perform an ecological inventory or job skill analysis of the specific job task on which the person will be rated.

2. Observe a minimum of three persons without handicaps (or the same person on three separate occasions) perform the job task for a predetermined time. It is recommended that the time period be no less than 10 minutes.

3. Record the quantity completed.

4. Evaluate the quality of the work and record the percentage done correctly.

You are now ready to measure the adult's productivity and compare it to the norms. To ensure an accurate measurement the adult must have had adequate time to become familiar with the job task and any equipment. The working conditions, lighting, equipment, materials and product should be exactly the same as during

development of the norms. To perform the productivity measurement you will need a stop watch, a "90-10 Form" (Appendix E), and the norms. Perform the productivity assessment in the following manner:

1. Tell the adult that you are going to evaluate his or her ability to perform the job task.
2. Tell the adult to do his/her best, but do not unnecessarily rush him or her.
3. Tell the adult to begin and start the stop watch.
4. When the predetermined amount of time has elapsed, tell the adult to stop working.
5. Record the amount of work completed.

Some job tasks are better measured if the worker is allowed to finish the entire job as opposed to using only a predetermined amount of time. An example of this is cleaning rooms at a hotel. It would be a more accurate measurement if you allowed the adult to complete the entire room and then record the total time it took instead of how much of the room the adult completed in a 15-minute period of time. Other examples of job tasks which may be better measured by allowing the adult to complete the entire task are car washing, janitorial tasks, and some types of food preparation.

Goal I
Objective 2
Learner Activity (d)

Conducting a Time Study

Using the U.S. Department of Labor Employment Standards Administration, Wage and Hour Division, "90-10 Form" complete the following activity.

1. Arrange with a local business to observe and measure the quantity and quality of a nonhandicapped worker's performance on one of their regularly scheduled job responsibilities. As noted in the video tape, the task should be one which can be best measured in terms of quantitative and qualitative data and one which is repeatedly performed in a short period of time (once every 5-10 minutes).

2. Complete the "90-10 Form" with the collected data.

3. Arrange to learn and perform the job task.

4. After you have had the opportunity to become familiar with the job task, perform the task and record your quantity and quality on the "90-10 Form" using the regular worker's data as the norm.

Learner Activities for Goal I, Objective 3

Apply for subminimum wage certificates.

(a) Read U. S. Department of Labor Employment Standards, Administration Wage and Hour Division, Regulations, Part 524, Special Minimum Wages for Handicapped Workers in Competitive Employment (Appendix B).

(b) Review the following handout entitled "Completing a Subminimum Wage Certificate" and complete the attached Form WH222.

Goal I
Objective 3
Learner Activity (b)

Completing a Subminimum Wage Certificate

A sample of the Application for Special Worker Certificate WH 222, that was discussed in the video tape is contained in Appendix A. Using the following information complete the form.

Worker:	Andrew Hills 211 A Street
Birth Date:	4-1-55
Diagnosis:	Moderate Mental Retardation
Employment Site:	Modern Way Grocery Store 358 Pullman Hwy., Moscow 883-6565
Starting Date:	10-21-85
Job:	Shelf Stocker
Regular Wage:	$3.75 per hour
Productivity Measurement:	64%

Learner Activities for Goal I, Objective 4

Determine if a business is covered by federal or state regulations.

(a) Read U.S. Department of Labor Employment Standards, Administration Wage and Hour Division, Handy Reference Guide to the Fair Labor Standards Act, WH Publication 1282, Revised January 1982, pages 2-3 (Appendix C).

(b) Review the following handout entitled "Determining State or Federal Coverage of a Business", and complete the activity as outlined.

Goal I
Objective 4
Learner Activity (b)

Determining State or Federal Coverage of a Business

Review the criteria for determining state or federal wage and hour coverage. Identify two businesses within your community (city or county) which would be covered by only state regulations and five that would be covered by the federal regulations and list the reasons why.

Federal Criteria:

If the business meets any one of the following criteria, it would have to follow the U. S. Department of Labor Employment Standards Administration, Wage and Hour Division, guidelines.

1. All employees of enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered.

2. All of the following businesses, regardless of size, are covered by federal regulations:

    a. Businesses engaged in laundering or cleaning of clothing or fabrics.

    b. Businesses engaged in construction or reconstruction.

    c. Businesses engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises, a school for mentally or physically handicapped or gifted children, a preschool, an elementary or secondary school, or an institution of higher education (regardless of whether such hospital, institution or school is public or private or operated for profit or not for profit).

    d. Businesses whose annual gross volume of sales or business done is greater than $362,500.00.

    e. Federal employees.

f. All state and local employees except those in traditional governmental activities. These are schools, hospitals, fire prevention, police protection, public health, parks and recreation.

g. Employees who are employed by non-covered businesses but who perform the following job tasks:

1. employees in communication and transportation.

2. employees who handle, ship or receive goods moving in interstate commerce.

3. clerical or other workers who regularly use the mail, telephone, or telegraph for interstate communication or who keep records on interstate transactions.

4. employees who regularly cross state lines in the course of their work.

5. employees of independent employers who perform clerical, custodial, maintenance, or other work for firms engaged in commerce or in the production of goods for commerce.

h. Domestic service workers, such as maids, day workers, housekeepers, chauffeurs, cooks, or full time baby sitters, are covered if they receive $50.00 in cash payments in a calendar quarter from their employer or work a total of more than 8 hours a week for one or more employers.

MODULE II

Understand and Properly Apply Insurance Guidelines

MODULE II

Introduction

With the movement towards supportive employment, more students and adults are being evaluated, trained, and placed in the community. One of the immediate issues that must be resolved is insurance coverage. Who is liable for the worker when he or she is performing activities that have been arranged by agency/school personnel in an employer's business? Given the dramatic increase of lawsuits, agencies are carefully evaluating the coverage of their insurance policies. Business owners have found themselves in similar situations and have either discontinued some services or, in some cases, have quit the business because liability insurance is too expensive or not available.

School and adult agency personnel who are setting up community-based vocational programs will have to be prepared to answer the employer's questions about insurance coverage. To do this the person will have to be familiar with Workers' Compensation Law, general liability insurance, the agency/school's own insurance coverage, and any supplemental medical insurance available.

Insurance policies and coverage will vary for each agency/school and business. It is not unusual for policy coverage to be changed with each renewal. What might have been covered one year may not be covered the next. The following materials have been developed to assist agency personnel in determining what insurance coverage they have and what additional coverage they may need.

Goal II and Objectives

Goal II. Understand and properly apply insurance guidelines.

Objectives:

1. Determine the extent and type of insurance coverage provided under the current policy.

2. Determine the extent of coverage offered by supplemental medical policies.

3. Determine if a student or adult is covered by the business' insurance.

Learner Activities for Goal II, Objective 1

Determine the extent and type of insurance coverage provided under the current policy.

(a) Review the following handout entitled "Identifying Your Insurance Needs," and complete the activities as outlined.

Goal II
Objective 1
Learner Activity (a)

Identifying Your Insurance Needs

1. Draft an outline of your proposed community-based vocational training program. The outline on the next page is an example that has been used.

2. Present your outline to the appropriate administrator and request that written clarification be provided regarding extent of insurance coverage under these conditions.

3. Based on the written clarification, draft a plan that identifies the areas which are not or may not be covered.

Form to Outline Insurance Coverage for Community-Based Programs

Purpose: _____

(check one) _____ training _____ non-paid _____ paid
(wage estimate)_____
_____ employment (wage estimate)_____

Work Supervisor: Name_____

Address_____

Phone_____

Type of Business_____

Number of Students Involved: _____

School	Class Assignment	Disability
_____	_____	_____
_____	_____	_____
_____	_____	_____

Sample Parent Permission Form: Attached to this form.
Sample Employer/Student Contract: Attached to this form.

Program Presented to School Board:_____
(list date or tentative date & presenter)

(check one) approved _____ date _____

disapproved _____ date _____

other _____ specify _____
_____

Presented to Parents:_____
(list date or tentative date & presenter)

Description of School Insurance Coverage:

_____ Covers school and non-school instruction

_____ Covers on-school grounds instruction only

_____ Additional coverage through school required and available for $ _____

_____ Student must be covered by parent's insurance, SSI, or own insurance

_____ Student covered by Workman's Compensation while on job (DOES NOT include transportation to & from)

* All U.S. Department of Labor requirements regulating the working conditions of 16-18 year olds (exposure to hazardous chemicals, heavy machinery, etc.) will be followed.

Learner Activity for Goal II, Objective 2

Determine the extent of coverage offered by supplemental medical policies.

(a) Review the following handout entitled "Supplemental Insurance Coverage," and complete the activities as outlined.

Goal II
Objective 2
Learner Activity (a)

Supplemental Insurance Coverage

The placement of adults in local community businesses poses a critical question: If the adult is injured while in training, who is responsible for the medical costs which may be incurred? The main factor in determining liability is whether there is an "employee-employer relationship." If the adult is being paid by the employer the business' Workers' Compensation should adequately cover any medical costs. In the event that the adult is not on the payroll or not considered an employee and he/she is injured while performing a job task, it may be determined that the adult is responsible for the medical costs. All cases will be individually evaluated and ruled on by the Industrial Commission. To ensure that the adult/student and his/her family have sufficient medical coverage, all available insurance coverage should be considered. The following is a list of different types of coverage:

1. **Family Policy**

   If the adult/student lives at home, determine if the family has medical insurance which will provide coverage in the case of an accident in the community. Depending on where the parents work, the adult/student may automatically be included in a family medical policy provided at no cost or limited cost to the family. It is critical to determine the age limitation of family insurance coverage. Generally, family medical coverage will apply to the children until age 21 if they remain in school or a training program.

2. **Medicaid Insurance**

   If the adult/student is receiving Supplemental Security Income (SSI) through Social Security, he or she will also have Medicaid which will cover any medical cost associated with an accident. Other Social Security benefits such as "survivors benefits" may not include a medical policy. Each student and family situation will have to be reviewed individually.

3. **Volunteer Coverage**

In some communities nonprofit corporations have been organized to coordinate and offer volunteer services to agencies and programs within the community. The nonprofit organization that coordinates and places the volunteers will generally have an insurance policy which will provide medical coverage if the volunteer is injured while on the job. In this case adults/students could be recognized as volunteers through such an organization and be placed on nonpaid career exploration or evaluation sites in the community.

When evaluating insurance coverage, the following points should be considered:

1. Is an additional policy needed? If yes, what is the cost?
2. What are the benefits offered?
3. What is the deductible?
4. Who has to purchase the policy? When can a parent purchase the policy?
5. Does the adult/student have to live at home?
6. Is there an age limitation?
7. What is the duration of the policy?
8. Is a physical examination required?
9. Does the policy have exclusion clauses which would keep adults with handicaps from being eligible?
10. Is there a pre-existing condition clause?

With the above information, evaluate the insurance needs of each individual and identify the areas in which additional coverage is needed.

Learner Activities for Goal II, Objective 3

Determine if a student or adult is covered by the business' insurance.

(a) Review the following handout entitled "Factors to Be Considered For Determining Responsibility of Insurance Coverage."

Goal II
Objective 3
Learner Activity (a)

Factors to Be Considered For Determining Responsibility of Insurance Coverage

In most community-based vocational training programs, adults and students are placed in nonpaid work stations for vocational assessment and career exploration. To accurately assess who is responsible for the insurance coverage, the following should be considered.

1. Workers' Compensation can only cover those individuals who are considered employees of the business. Generally insurance companies consider the employer to be the individual who pays the wages for the work produced. Two examples will help illustrate the point. If an agency/school opts to pay the student/adult directly for the hours that he/she has worked in a local business, then it will be the agency/school's responsibility to provide the Workers' Compensation coverage. In contrast, if the agency paid the employer a stipend or monthly minimum fee for having the adult on site and the employer in turn paid the adult, then the employer would have the Workers' Compensation responsibility.

2. If an adult/student is placed in a local community business and is not being paid (e.g. career exploration), and is injured and needs medical attention, a decision will have to be made about how to handle the cost of the medical coverage. By law, any injury to a worker which requires more than traditional first aid that can be administered on site must be reported. In the case of a nonpaid worker, if the injury is reported and the worker or family feels it should not be liable for the medical costs, then an investigation by the Industrial Commission and the Department of Labor will be conducted to determine if an "employer-employee relationship" exists. If it can be determined that an "employer-employee relationship" does exist, then the employer will be responsible for the medical cost under his/her Workers' Compensation.

MODULE III

Identify and Utilize Strategies

for Developing Community Sites

MODULE III

Introduction

Using businesses in the community for training sites presents a number of unique challenges and barriers, but also results in very effective instruction. One of the immediate challenges community-based vocational training presents is the actual identification and development of relations with businesses which meet the needs of the agency and the adult/students it serves.

Employers generally understand very little about persons with handicaps and community-based vocational training programs. Agency and school professionals must demonstrate a great deal of confidence in themselves, the training program, the adult or student and must convince employers that participating in the program benefits not only persons with disabilities, but the employer's business as well.

How does one do this when his or her professional training and experience has been limited to working in an agency-based or classroom-based program? The following units will address these guidelines and strategies and hopefully allow staff to become comfortable with their ability to meet employers and develop placement sites or training stations.

Goal III and Objectives

Goal III. Be knowledgeable about strategies for developing sites or stations.

Objectives:

1. Distinguish between a Work Station, Work Assignment, and Job Placement.

2. Evaluate each site with respect to worker integration, training required, number of placements per site, and availability of similar employment in the community.

3. Use eight different strategies for identifying possible training sites in local businesses.

4. Develop a short presentation and/or handout on your agency's or school's community-based vocational training program.

5. Contact an employer, arrange for an interview, and present the community-based vocational training program.

Learner Activity for Goal III, Objective 1

Distinguish between a Work Station, Work Assignment and Job Placement.

(a) Review the following handout entitled "Deciding What it is That You Want".

Goal III
Objective 1
Learner Activity (a)

Deciding What it is That You Want

When preparing to review a business or interview the manager or personnel director, there are key question which must be addressed:

1. Do I want a work station, work assignment or job placement site?
2. Are there opportunities for workers with handicaps to interact with nonhandicapped workers?
3. How many workers with handicaps could be placed on the site without overloading it?
4. Are there opportunities for the workers with handicaps to perform a variety of jobs?
5. What is the frequency of job openings in similar types of work within the community?
6. How receptive would the owner, manager and employees be to having workers with handicaps on the job site?
7. What is the relationship of the tasks performed on the job to other skills that the adult/student may be trying to learn in other settings?

The role of the community site should be carefully considered. There are three basic types of vocational environments: Work Stations, Work Assignments, and Job Placements.

The first of these is a Work Station. By definition, a Work Station is a community site where a large number (4-8) of adults/students with handicaps can simultaneously receive training, systematic instruction, and supervision on a variety of jobs. Supervision is generally provided by school or agency personnel, but may also be provided occasionally by an employer or employee in the Work Station. The focus is on training and thus there is no remuneration and training is only a few hours a week. Each trainee is on the Work Station for a predetermined length of time which may range from one week to one year. The Station is generally used for providing career exploration experiences, evaluating the adult's or student's ability

to perform job tasks, and assessing social skills. It is not intended to be used as an employment site.

A Work Assignment is a site where only one or two trainees receive instruction on a specific job task. The purpose of the Work Assignment is to provide a realistic community environment where trainees receive less supervision and have more opportunities to interact with nonhandicapped workers. Direct instruction is provided by both agency/school personnel and job site employees. Supervision is gradually faded out once the trainee can perform the task independently and at a rate expected of a nonhandicapped employee. The Work Assignment is generally reserved for training, but in some cases may be developed into an actual job placement site. As the trainee gradually becomes independent on the job task, he/she is paid. The hours per week and length of time on the job site will vary. Depending on the complexity of the tasks being learned, the trainee may stay on the job site as long as a school year, and the hours worked per week may range from few to half time.

The Job Placement is a site at which attempts are made to have the adult/student with a handicapping condition hired as an employee of the business. Contingent on the adult/student's productivity and work schedule, wages and benefits may vary but are based on those received by nonhandicapped workers at the site. The adult may require continued training or intermittent support. The placement site is viewed as an employment opportunity which may be part time or full time and which should continue indefinitely or until other opportunities arise.

Learner Activities for Goal III, Objective 2

Evaluate each site with respect to worker integration, training required, number of placements per site, and the availability of similar employment in the community.

(a) Read the following handout entitled "Desirable Characteristics of Community-Based Vocational Sites."

(b) Given an occupational area, identify three businesses in the community which employ individuals in such positions and rate them using the "Evaluating Businesses for Placement" form.

Goal III
Objective 2
Learner Activity (a)

Desirable Characteristics of Community-Based Vocational Sites

Once you have decided on the type of sites you want, you will need to evaluate the site in terms of opportunities for the adult/student to interact with nonhandicapped workers. Depending on the business, some sites will require interactions with coworkers or the public. An example of this would be a site located at a grocery store where the worker is responsible for bagging groceries and stocking shelves and coolers during store hours. The worker has to be able to greet customers and politely assist them with bagging their groceries or directing them to food items. In these situations the worker will have close physical contact with nonhandicapped coworkers and must also be able to interact with customers using both verbal and nonverbal communication. In contrast to this example, placement at a business in which the worker operates a microfilm camera or files documents in an isolated area requires minimal interaction with the public and coworkers.

Interactions with nonhandicapped workers or the public do not have to occur during the entire work period, but frequent enough to offer opportunities for social interaction. For example, in an assembly plant or commercial laundry the noise of the equipment may inhibit conversations but still allow for nonverbal social communication, such as eye contact, gestures, or facial expressions. If there is an opportunity for the adult/student with a handicap to be on the site during coffee breaks or lunch time, every effort should be made to have him or her participate and interact during this time.

Depending on the number of staff, training of staff, and number of individuals enrolled in the vocational program, the logistics of providing appropriate training and supervision on numerous sites throughout a community becomes difficult. In these cases careful planning and schedule coordinating by staff may be necessary.

If persons with handicaps represent 3-4% of the general population, then in a community site the work force should also reflect this proportion. Keeping within this guideline, only one adult per every 25 to 35 workers would be placed. Unfortunately, in small rural communities this is far too restricting but does illustrate an important point: the ratio of workers with handicaps to workers without handicaps should be considered when deciding who and how many should be placed on the site.

In setting up the community sites, you may have a specific type of job in mind, but it is important to also evaluate the community in terms of what additional job tasks are available for the adult/student to observe and learn about. An example of this may be the situation in which the adult says that she would like to work as a motel maid. In locating a motel or hotel to approach for a community site, it would be advantageous to select one which not only has maids, but also restaurant help, in-house laundry workers, a grounds keeping crew, and clerical staff. With the consent of the employer and a structured approach arranged by the teacher or work supervisor the adult/student could observe and actually experience the responsibilities of the other jobs located on the site.

Another consideration is the frequency with which job openings requiring similar types of skills are available in the community. Depending on the community and the industry, some types of work may only have a few openings per year, and there are numerous people applying for the position. A relatively easy means of conducting a labor market analysis would be to monitor the job openings listed in the newspaper and the local Job Service Office. Based on these results, you could select community sites partly on the frequency of availability.

One of the most difficult factors to forsee is how the management and coworkers might respond to having persons with handicaps working alongside them. The personal feelings and reactions of each worker cannot realistically be surveyed. It is generally perceived that most workers have stereotypic perceptions of people with handicaps, but this cannot always be assumed. It is only by working with individual employees that you will be able to determine their attitudes. It should be

remembered that this may be the first time the employees have had contact with a person with handicaps. As such, it is important that you take advantage of the opportunity to dispel any misconceptions and help them to better understand the adult trainee or worker to assure them their job or their competence is not threatened. Research data is encouraging and the data indicates that contact with employees is an important factor in enhancing attitudes.

The final area of consideration in selecting a community site is the degree to which the skills that will be learned on the site can be used across other environments, materials or people. A most obvious example of this may be the adult who is placed at a restaurant doing food preparation, such as washing and slicing vegetables, weighing and slicing meats, and washing dishes. All of these skills have the potential to be used in a domestic setting. This is not to suggest that an available site or job opportunity be dismissed because it does not have transferable skills, but if there is a choice when selecting a station, this factor should be considered.

Goal III
Objective 2
Learner Activity (b)

Evaluating Businesses for Placement

Directions:

You have several adults who have a stated interest in food service occupations. Identify three businesses within your community which employ food service workers and rate the positions by using the "Evaluating Businesses For Placement Form." Based on the rating, rank (high to low) the three businesses and explain why.

Evaluating Businesses for Placement

Name of Business_____ Date_____

Address_____

Contact Person_____

Phone Number_____

Using a scale of 1 to 5, with 5 being the highest, rank the business according to the following items.

	Item	Ranking	Comment
1.	Physical location for interaction with co-workers.		
2.	Number of adults who can be placed on the site.		
3.	Opportunities during the day for interaction with workers performing other jobs.		
4.	Receptiveness of the employer and employee.		
5.	Ability to use skills in other domains.		

Learner Activities for Goal III, Objective 3

Use eight different strategies for identifying possible training sites in local businesses.

(a) Read the following section entitled "Strategies For Identifying employers."

(b) Complete the activities outlined on the following handout entitled "Community Site Identification Strategies."

Goal III
Objective 3
Learner Activity (a)

Strategies For Identifying Employers

Once you have decided what type of community sites you want and for what purpose (Work Station, Work Assignment, Job Placement) you are ready to begin identifying those specific businesses that meet your needs. There are numerous strategies for identifying potential businesses and the technique which proves to be most helpful will depend on the size of your community and your personal style.

The following is a list of the most commonly used resources in identifying Work Station, Work Assignment and Job Placement opportunities in businesses in the community.

1. Newspaper
2. Department of Employment
3. Mailing Lists
4. Personal Knowledge and Experience
5. Friends, Family, Professional Contacts and Parents
6. Yellow Pages
7. Chamber of Commerce
8. Business Directories

The local and regional newspapers offer a convenient means of identifying potential community sites and employers. Most employers who have an affirmative action program use the newspaper as a method of advertising their positions to the public. Unfortunately there are some limitations in using the newspaper. First, not all businesses want their name in the "Help Wanted" column, because the time and effort required to answer inquiries of prospective applicants requires more personnel time than is available. In cases such as these, the business listing a job opening may use a Post Office Box or a special mailing address. Another drawback is that some businesses advertise consistently as a technique to keep applications on file but may not actually have any job openings. A third consideration is that if a job

opening is repeatedly listed in the newspaper with the same business, some investigation should occur to determine why there is a high turnover position. Hopefully as you become skilled at identifying job openings and businesses within the community, you will be able to quickly identify those businesses in the newspaper which can help your program. The "Help Wanted" ad is not the only place that you should look when using the newspaper. The business and financial section will often have articles on local businesses and their products or services. Take advantage of the article to gain insight into the business and its potential use to you and your adults/students.

Every state has a state-operated agency whose primarily responsibility is matching people who are unemployed with employers who need workers. Generally it is known as Job Service but may operate under a different title or be included as an umbrella agency with the Department of Employment. Employers are able to have Job Service act as a no-cost employment agency: identifying, screening and interviewing people for their job openings. Job openings within the community, region and state are maintained and are a tremendous resource when you are trying to identify businesses that are currently hiring or have a need for a specific type of work. Job Service also administers employer incentive programs such as Targeted Job Tax Credit (TJTC), on-the-job training (OJT), Private Industry Council (PIC) programs and summer youth employment programs. In addition to administering programs and listing jobs, Job Service also collects and publishes information on local and state employment and economic trends. Anyone is eligible to receive a copy of the monthly publication.

Mailing lists of job announcements provide some insights into the local and regional labor market. Usually large businesses or government agencies, such as the city, county, or state, routinely publish lists of current job openings. Larger businesses, such as hospitals, agencies, institutions and corporations, use the mailing list as a method of advertising their job openings and ensuring that they reach minority groups. One of the drawbacks of a mailing list is that information is often

not provided with the announcement. Usually it will list only the job title and classification and may sometimes give a brief explanation of the duties. Unless you are familiar with the job title and classification, you may be unable to determine if it is an appropriate position for one of your adults/students.

Your personal knowledge of businesses that you have worked for in the past can help you identify potential community sites. Your observations of how the management views working with persons with handicaps, the attitudes of the workers and the feasibility of using the business as a community site is invaluable information.

Friends, family, professional contacts and parents are a very valuable tool for identifying businesses that would be compatible with your program. Approximately 90% of all jobs are found through these sources. This is an excellent example of networking: who knows who, who knows the manger at the Main Street Inn. Instead of having to depend solely on yourself for possible opportunities with businesses, you now have several people who are indirectly helping you. Professional organizations, civic groups, and clubs give you an opportunity to associate with people outside of your own profession and generally those who work within the private sector. All are resources for identifying potential businesses for your program.

The Yellow Pages are very useful for identifying businesses, especially those that may offer more than one type of work site, such as a large hotel which has a restaurant, a bar, small stores and a laundry.

The local or regional chamber of commerce is another resource which usually has readily available information on businesses in the community and may also be able to provide specific information on the product or services they offer, the number of employees, and other general background information. In response to the recent economic recession, chambers of commerce have become more sophisticated in their cataloging of businesses and the data that they keep.

Business directories are generally available at either your city library, chamber of commerce, or city offices. These directories contain lists of the local businesses, describe the products and services and usually have an address, phone number and a contact person. Directories which cross reference businesses by products and services are also available. Depending on the town or library, regional listings may also be available.

Goal III
Objective 3
Learner Activity (b)

Community Site Identification Strategies

Directions:

Using all eight of the strategies presented, identify three potential sites for adults interested in clerical occupations. Record your information on the following form. Note the number of openings found per source, and comment on the quantity and quality of information given (i.e. given only a person to contact, job title, rate of pay, not sure if the job is still open).

Community Site Identification Strategies

	Strategy	Findings	Comment
1.	Newspapers		
2.	Department of Employment		
3.	Mailing Lists		
4.	Personal Knowledge and Contacts		
5.	Friends, Family, Professionals		
6.	Yellow Pages		
7.	Chamber of Commerce		
8.	Business Directories		

Learner Activity for Goal III, Objective 4

Develop a short presentation and/or handout on your agency/school's community-based vocational training program.

(a) Review the following handout entitled "Guidelines for Preparing an Employer Presentation," and complete Activities 1-4 as outlined.

Goal III
Objective 4
Learner Activity (a)

Guidelines For Preparing An Employer Presentation

Activity 1.

Contacting employers and discussing your community-based vocational program can be an intimidating process if you have little experience or preparation for this task! Review the following information, and as you complete Activity 2 keep the following points in mind.

Businesses in the community operate by buying products or services and in turn selling goods or services to the public or other businesses. The actual selling price of the product or service includes the cost of materials, labor, transportation, profit, and overhead. To compete, the business must ensure it is paying the lowest price for the best quality. When approaching employers the agency/school staff must take the same businesslike approach and present the potential worker and training program as a service. To do this they must view themselves as salespeople and approach the employer from a sales perspective.

YOU ARE NOW A SALESPERSON

Good sales people know:

1. their product
2. their product's assets and limitations
3. their customer's needs
4. how their product can or cannot meet their customer's needs
5. the mutual benefits

A. **Know your product:** Know your adult/student's social/cultural background, skill assets and work interests, family, and involvement in the community (e.g. has the adult been in trouble with the neighborhood, are the parents in a position to influence or help, does the employer know the family).

B. **Know your product's assets and limitations:** What are his or her academic, social, vocational, community, and physical strengths and weaknesses and how do they apply specifically to this employer? Be able to demonstrate or document the assets, actual products that he or she has produced (e.g. welding, food preparation, sewing).

C. **Know your customer's needs**: The employer is in business to make a profit! Be familiar with the specific equipment, jargon and production techniques. Be knowledgeable about their quality and productivity standards. What are the problem areas for that industry (e.g. a specific job area that has a high turnover or is a more difficult job to perform). Ask to observe jobs prior to stating whether or not you have a person for a certain job. This will help you become familiar with the job and employment atmosphere and provide you with information to determine if this site could become a training station training or a placement site.

D. **Do not be afraid to discuss how you can or cannot meet your customer's needs:** The person who you have in mind may have the majority of the skills to do the job, but may lack one main skill that the employer requires. In this case you may have to eliminate this site as a possibility. You should discuss altering the job to allow the person to perform the task or use more than one worker to perform the job or parts of the job.

E. **Mutual Benefits**: Be able to point out the benefits of hiring the student/adult to the employer: A trained employee, no direct costs or risks, prior knowledge of the employee's skills and weaknesses, training and support system offered by you, ownership in a community project, possible wage reimbursements and tax credits, acknowledgement in letters to the editor in local newspapers and through local and state committees for hiring persons with disabilities.

Activity 2.

Directions:

Develop an introductory meeting narrative which discusses your community-based vocational program and includes the following elements. Remember, the person that you will be presenting this to will not be familiar with community-based programming. Keep it short. Do not use acronyms, initials or jargon.

I. Introduction

- A. Names
- B. Job title/responsibilities

II. Justification for the meeting

- A. Explanation of the meeting
  1. Rationale for community-based
  2. Why you personally believe in it
  3. What type of individuals you are working with
  4. Cooperative agency agreements
  5. Advantages of community-based
     - a. generalization of skills
     - b. social validation
     - c. integration
     - d. career exploration
     - e. job training
- B. Employer/agency responsibilities
  1. Employer's responsibilities
     - a. safe work place
     - b. supervision
     - c. training
     - d. performance evaluation
     - e. proper insurance coverage
     - f. schedules
     - g. wages

2. Agency's responsibilities

   a. training
   b. supervision
   c. liability
   d. crisis intervention
   e. problem solving

III. Employer Discussion of the Business

A. What type of business is it?

1. Manufacturing or service
2. Description of what they do

B. Review of personnel

1. How many people do they employ?
2. What types of positions: prof., tech., nonskilled?
3. Hiring trends during the last year and anticipated future hirings
4. Expectations of employees
5. Work schedules
6. In-house training programs--explain
7. Wages and benefits
8. Past history of hiring individuals with handicaps

C. Possible employer incentives

1. Career exploration (not paid)
2. Job training (paid)
3. Sub-minimum wage certificate
4. Targeted Job Tax Credit
5. O.J.T.
6. Community involvement

IV. Summary

A. Confirmation of interest in the program

1. Summarize and highlight the critical points

B. Set a date for the follow-up meeting to:

1. Conduct inventories
2. Discuss a specific person you have in mind
3. Reconfirm interest in the program
4. Answer specific questions
5. Return with specific information requested

C. Leave a business card or program brochure

Activity 3.

Practicing Your Narrative

Now that you have a narrative which addresses all of the important points of your program it is important that you have an opportunity to practice and become comfortable with the material. Begin by rehearsing your presentation with fellow staff members. This will allow you the opportunity to practice your presentation, review your content, get feed-back from your peers, and inform your peers of your program so they can share their contacts with you. Develop an evaluation sheet which individually lists all of the key points outlined in Activity 2. Schedule two separate times to present, and have at least two individuals rate your presentation. Review the evaluation forms and adjust your presentation accordingly.

Activity 4.

Identify an employer with whom you are familiar and make arrangements to videotape your presentation to the employer. The employer can be a friend, business acquaintance, or past employer. Make sure that you use a remote microphone to adequately pick up sound, have adequate lighting, and can see both the employer and yourself in the picture. With the same evaluation form used for your practice interviews, observe and rate yourself. Have two others view your videotapes and rate your performance. Change your presentation accordingly. The attached Presentation Evaluation sheet can be used to rate your presentation.

PRESENTATION EVALUATION

Presentation		Rating		
		Ex.	Ave.	Poor
1.	Clear speaking voice	____	____	____
2.	Mannerisms appropriate for a Professional	____	____	____
3.	Comprehensive coverage appropriate to objectives of the presentation	____	____	____
4.	Pacing of content is appropriate	____	____	____
5.	Ability to answer questions	____	____	____
6.	Summary of critical information	____	____	____
7.	Handouts are provided	____	____	____

Comments:

Learner Activity for Goal III, Objective 5

Contact an employer, arrange for an interview and present the community-based vocational training program.

(a) Read the following handout entitled "Guidelines for Employer Contact," and familiarize yourself with answers to questions/concerns commonly asked/noted by employers.

Goal III
Objective 5
Learner Activity (a)

Guidelines For Employer Contact

INITIAL EMPLOYER INTERVIEW

You are a salesperson. You must be able to sell your program with conviction!

Guidelines for Initial Employer Interview:

1. Be prepared. Make a checklist of the points you wish to cover during the interview. Refer to the checklist during the interview to ensure that you cover all your points.

2. Dress professionally, but in such a way as to fit into the atmosphere of the site.

3. Always behave in a professional manner. Follow through with any commitments made during the interview.

4. Discuss in detail the work experience program. Explain the purpose of community-based training. Leave a brochure with the employer to read over later.

5. Sell the benefits of the program. Offer case histories and success stories of past and current employers. Provide names of employers you have worked with. If time permits show pictures of adults with handicaps working at work sites in the community.

6. Describe in detail the adult or student(s) to be placed who will receive training. Discuss the individual's skills as they can best be used on the specific job. Discuss areas of the job that the adult will not be able to do or may have difficulty learning.

7. Be prepared to say no if you feel the work site will not be suitable for the adult or for you.

8. Provide the employer with a written outline of the steps involved in placing a worker at the work site. Discuss each step with the employer so that he/she fully understands the program.

9. Close with a commitment from the employer and a date to begin the next step in the placement process. If the employer is not ready to make a commitment, give him a time when you will call back to get his answer.

A General List of Selling Points

1. As a group, employees with disabilities rank average or better on job stability, safety, attendance, and job performance.

2. An employee with a disability can be added evidence of compliance with affirmative action obligations (where pertinent).

3. By accommodating the special needs of a person with disabilities, the employer can demonstrate concern for the special needs of all employees.

4. Other employees who have family members or friends with disabilities benefit by seeing firsthand that a productive future is possible.

Additional Pointers

1. At the end of the interview, summarize what you think the employer has said in order to check for understanding.

2. Ask the employer if he/she has any questions.

3. If the employer seems interested and you are not very familiar with the business, ask for a tour of the site.

4. Be sure to think in terms of the adult/student doing some of the tasks that make up the job description, as well as all of the job. For example, some students may not be able to run the cash register at McDonald's, but they may be able to clear off the tables and dispose of trash.

COMMON PLACEMENT PROBLEMS AND SOLUTIONS

Problem 1; During initial contact, employer is reluctant to meet with agency staff member.

Solution; Send or leave program information with employer. Follow up with phone contact at a later time.

Problem 2; Employer is concerned about accident coverage on the job.

Solution; Provide the employer detailed written information about the agency and the adult/student's accident and liability insurance. Leave the name and number of the agency/school's accountant if the employer needs additional reassurance.

Problem 3; The employer has had bad luck in the past with workers who have handicapping conditions.

Solution; Emphasize that this program is different--the individual will always be supervised by agency/school personnel and any problems will be worked out by the trainer. Very little of the employer's or staff's time will be needed.

Problem 4; The employer states that he is too busy to participate in the program.

Solution; Emphasize to the employer that all training and supervision is provided by the agency staff. Involvement of the employer and his staff in the training process is desirable, but not to begin with.

Problem 5; Employer holds stereotypical views of the characteristics and abilities of persons with handicaps.

Solution; Provide examples of the types of local jobs which various persons have performed successfully. Emphasize the similarities among persons with handicaps and their nonhandicapped peers. Treat all employer concerns as legitimate.

Problem 6; Employer does not view handicapped persons as a feasible source of labor.

Solution; Provide factual information about the successful employment of handicapped workers relating specifically to the employer and his/her type of business. Provide names and telephone numbers of employers in the community who have participated in the program. Affirm that the person with handicaps often doesn't do all of the job tasks but complete numerous tasks. This job division enables more workers to perform tasks at their level of ability.

Problem 7; Employer has unrealistic expectations concerning workers with handicapping conditions.

Solution: Provide the employer with concrete examples of what can realistically be expected from an employee with a handicap (e.g., a client may be able to unload stock from a truck, but will not be able to drive a forklift).

Problem 8: Employer appears interested, but vacillates in regard to specifying a starting date for training.

Solution: The employer may be unclear how the program works, has unanswered concerns or is reluctant to tell the agency staff member that he is unwilling to participate in the program. The agency staff member can schedule a meeting with the employer to determine his commitment, respond to concerns and/or outline for the employer the steps involved in participating in the program. If the employer seems unwilling to participate in the program, it may be best to 1) leave program information and allow him to make future contact, 2) ask permission to observe and list jobs and conduct job inventories that describe what a person with a handicap could learn to perform.

ESTABLISHING WORK TRAINING (PAID/NON-PAID) SITES

Before you contact employers:

*Know the strengths and weaknesses of the person with handicaps.

*Know what skills the person has related to a particular job, and be able to discuss his or her previous work experience.

*Become familiar with the work site. Have in mind some potential jobs at the site before you call.

*Be knowledgeable of state and federal labor laws as they relate to the age of the worker and the nature of the job.

*Have a thorough knowledge of your agency/school's insurance and liability policy for non-paid work sites in the community.

*For paid sites, be familiar with local and state financial incentives for hiring persons with handicaps. Provide brochures if available.

Contacting the employer:

*Contact the employer during non-peak work hours (e.g., do not contact a fast food restaurant during the noon rush hour). For most businesses, mornings are usually the best time to catch the manager.

*Ask for the manager; if she/he is not there, get his/her name and ask when is the best time to contact him/her.

*Identify self and affiliation.

*Ask if it is a convenient time to talk for a few minutes.

*Discuss the program's goals.

*Give the employer specific information related to training and supervisory responsibilities if he asks; otherwise, this can be discussed during the initial interview.

*Emphasize the mutual benefits to the employer, including:

Trained employee
No cost to employer
May ease employer's workload
Participating in a community project

*Don't be afraid to discuss how the adult may or may not meet the employer's needs.

*Encourage the employer to contact other employers who have provided training sites in the past. Provide names and telephone numbers (obtain approval from employers prior to giving out this information).

Reading List

National Association of Rehabilitation Facilities. (1984). Federal wage and hour law: A guide for vocational rehabilitation facilities. Washington, D.C.: National Association of Rehabilitation Facilities.

U. S. Department of Labor Employment Standards Administration Wage and Hour Division. (1981). Handy reference guide to the Fair Labor Standards Act (WH Publication 1282). Washington, D.C.: U.S. Department of Labor Employment Standards Administration Wage and Hour Division.

U. S. Department of Labor Employment Standards Administration Wage and Hour Division. (1978). Child labor requirements in nonagricultural occupations (WH Publication 1330). Washington, D.C.: U.S. Department of Labor Employment Standards Administration Wage and Hour Division.

U. S. Department of Labor Employment Standards Administration Wage and Hour Division. (1979). Employment relationship under the Fair Labor Standards Act (WH Publication 1297). Washington, D.C.: U.S. Department of Labor Employment Standards Administration Wage and Hour Division.

U. S. Department of Labor Employment Standards Administration Wage and Hour Division. (1978). Regulations, part 524 special minimum wages for handicapped workers in competitive employment (WH Publication 1316). Washington, D.C.: U.S. Department of Labor Employment Standards Administration Wage and Hour Division.

Idaho Department of Labor and Industrial Services. (1984). A guide to Idaho labor laws. Boise, Idaho: Idaho Department of Labor and Industrial Services.

Idaho Department of Education. (1985). Labor issues in transition planning. Boise, Idaho: Idaho Department of Education.

Pumpian, I., Lewis, L., & Engel, T. S. (1986). The criterion to establish a trainee/employer vs. employee/employer relationship: A review of litigation. Unpublished manuscript, San Diego State University, Department of Special Education, San Diego.

APPENDIX A

Employment Relations Under the Fair Labor Standards Act

WH Publication 1297

Employment Relationship Under the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1297
(Revised May 1980)
(Reprinted August 1985)

This publication is for general information and is not to be considered in the same light as statements of position contained in Interpretative Bulletins published in the Federal Register and the Code of Federal Regulations, or in the official opinion letters of the Wage and Hour Administrator.

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

EMPLOYMENT RELATIONSHIP UNDER THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act contains provisions and standards concerning recordkeeping, minimum wages, overtime pay and child labor. These basic requirements apply to employees engaged in interstate commerce or in the production of goods for interstate commerce and also to employees in certain enterprises which are so engaged. Federal employees are also subject to the recordkeeping, minimum wage, overtime, and child labor provisions of the Act. Employees of State and local government are subject to the same provisions, unless they are engaged in traditional governmental activities, in which case they are subject to the recordkeeping and child labor requirements. The law provides some specific exemptions from its requirements as to employees employed by certain establishments and in certain occupations.

The Act is administered by the U.S. Department of Labor's Wage and Hour Division with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission and the Tennessee Valley Authority. The Office of Personnel Management is responsible for administering the Act with regard to all other Federal employees.

For the Fair Labor Standards Act to apply to a person engaged in work which is covered by the Act, an employer-employee relationship must exist. The purpose of this publication is to discuss in general terms the latter requirement.

If you have specific questions about the statutory requirements, contact the W-H Division's nearest office. Give detailed information bearing on your problem since coverage and exemptions depend upon the facts in each case.

STATUTORY DEFINITIONS

Employment relationship requires an "employer" and an "employee" and the act or condition of employment. The Act defines the terms "employer", "employee", and "employ" as follows:

"Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization. - Section 3(d).

(1) Except as provided in paragraphs (2) and (3), the term "employee" means any individual employed by an employer.
(2) In the case of an individual employed by a public agency such term means--
- (A) any individual employed by the Government of the United States--
  - (i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),
  - (ii) in any executive agency (as defined in section 105 of such title),
  - (iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,
  - (iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or
  - (v) in the Library of Congress;
- (B) any individual employed by the United States Postal Service or the Postal Rate Commission; and
- (C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual--
  - (i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and
  - (ii) who--
    - (I) holds a public elective office of that State, political subdivision, or agency,
    - (II) is selected by the holder of such an office to be a member of his personal staff,
    - (III) is appointed by such an officeholder to serve on a policymaking level, or
    - (IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.*

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

* See note on top on next page

*On June 24, 1976, the Supreme Court, in the case of National League of Cities v. Usery, ruled that it was unconstitutional to apply the minimum wage and overtime provisions of the Fair Labor Standards Act to State and local government employees engaged in activities which are an integral part of traditional government services. The Court expressly found that school, hospital, fire prevention, police protection, sanitation, public health, and parks and recreation activities are among those to which the minimum wage and overtime provisions do not apply. However, it is the Department's position that the decision effects no change in the application of the child labor or recordkeeping provisions.

"Employ" includes to suffer or permit to work. - Section 3(g).

EMPLOYMENT RELATION DISTINGUISHED FROM COMMON LAW CONCEPT

The courts have made it clear that the employment relationship under the Act is broader than the traditional common law concept of master and servant. The difference between the employment relationship under the Act and that under the common law arises from the fact that the term "employ" as defined in the Act includes "to suffer or permit to work". The courts have indicated that, while "to permit" requires a more positive action than "to suffer", both terms imply much less positive action than required by the common law. Mere knowledge by an employer of work done for him by another is sufficient to create the employment relationship under the Act.

TEST OF THE EMPLOYMENT RELATION

The Supreme Court has said that there is "no definition that solves all problems as to the limitations of the employer-employee relationship" under the Act; it has also said that determination of the relation cannot be based on "isolated factors" or upon a single characteristic or "technical concepts", but depends "upon the circumstances of the whole activity" including the underlying "economic reality". In general an employee, as distinguished from an independent contractor who is engaged in a business of his own, is one who "follows the usual path of an employee" and is dependent on the business which he serves. The factors which the Supreme Court has considered significant,

although no single one is regarded as controlling, are:

(1) the extent to which the services in question are an integral part of the employer's business;

(2) the permanency of the relationship;

(3) the amount of the alleged contractor's investment in facilities and equipment;

(4) the nature and degree of control by the principal;

(5) the alleged contractor's opportunities for profit and loss; and

(6) the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

TRAINEES

The Supreme Court has held that the words "to suffer or permit to work", as used in the Act to define "employ", do not make all persons employees who, without any express or implied compensation agreement, may work for their own advantage on the premises of another. Whether trainees or students are employees of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the Act:

(1) the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(2) the training is for the benefit of the trainees or students;

(3) the trainees or students do not displace regular employees, but work under their close observation;

(4) the employer that provides the training derives no immediate advantage from the activities of the trainees or students; and on occasion his operations may actually be impeded;

(5) the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(6) the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

EFFECT OF "SALE" ON THE RELATIONSHIP

An employment relationship may exist between the parties to a transaction which is nominally a "sale." An employee is not converted into an independent contractor by virtue of a fictitious "sale" of the goods produced by him to an employer, so long as the other indications of the employment relationship exist. Homeworkers who "sell" their products to a manufacturer are his employees where the control exercised by him over the homeworkers through his ability to reject or refuse to "buy" the product is not essentially different from the control ordinarily exercised by a manufacturer over his employees performing work for him at home on a piece rate basis.

FRANCHISE AGREEMENTS

The Act generally provides that a retail or service establishment which is under independent ownership would not lose its independent status solely because it operates under a franchise agreement. On the other hand, the franchised establishment and its employees may, in certain situations, be considered to be part of the franchisor's business. This would be particularly relevant in a situation where a franchisee is in control of the details of the day to day operations of the establishment, but the franchisor retains control over the basic aspects of the business. Where such a situation exists, they would be considered to be parts of a single business, and the employees of the franchised outlet would be considered to be employees of the franchisor.

FACTORS WHICH ARE NOT MATERIAL

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where the work is performed, the absence of a formal employment agreement and whether the alleged independent contractor is licensed by the State or local government are not considered to have a bearing on determinations as to whether or not there is an employment relationship. Similarly, whether a worker is paid by the piece, by the job, partly or entirely by tips, on a percentage basis, by commissions or by any other method is immaterial. The Supreme Court has held that the time or mode of compensation does not control the determination of employee status.

EFFECT OF EMPLOYMENT RELATIONSHIP

Once it is determined that one who is reputedly an independent contractor is in fact an employee, then all the employees of the so-called independent contractor engaged in the work for the principal employer likewise become the employees of the principal employer, who is responsible for compliance with the Act. However, in order to protect himself against the "hot goods" prohibition of the Act, a manufacturer or producer should undertake to see that even a true independent contractor complies with the law.

VOLUNTEER SERVICES

The Act defines the term "employ" as including "to suffer or permit to work". However, the Supreme Court has made it clear that the Act was not intended "to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another". In administering the Act, the Department follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable and similar nonprofit corporations which receive their services.

For example, members of civic organizations may help out in a sheltered workshop; women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or the elderly; mothers may assist in a school

library or cafeteria as a public duty to maintain effective services for their children; or fathers may drive a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious programs. The fact that services are performed under such circumstances is not sufficient to create an employee-employer relationship.

Religious, Charitable or Nonprofit Organizations: There is no special provision in the Act which precludes an employee-employer relationship between a religious, charitable, or nonprofit organization and persons who perform work for such an organization. For example, a church or religious organization may operate an institution of higher education and employ a regular staff who do this work as a means of livelihood. In such cases there is an employee-employer relationship for purposes of the Act.

There are certain circumstances where an individual who is a regular employee of a religious, charitable or non-profit organization may donate services as a volunteer and the time so spent is not considered to be compensable "work". For example, an office employee of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. The Department will not consider that an employee-employer relationship exists with respect to such volunteer time between the establishment and the volunteer or between the volunteer and the person for whose benefit the service is performed. However, this does not mean that a regular office employee of a charitable organization, for example, can volunteer services on an uncompensated basis to handle correspondence in connection with a special fund drive or to handle other work arising from exigencies of the operations conducted by the employer.

Members of Religious Orders: Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in schools, hospitals and other institutions operated by the church or religious order are not considered to be "employees" within the meaning of the law. However, the fact that such a person is a member of a religious order does not preclude an employee-employer relationship with a State or secular institution.

JOINT EMPLOYMENT

A single individual may stand in the relation of an employee to two or more employers at the same time under the Fair Labor Standards Act, since there is nothing in the Act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer. A determination of whether the employment by the employers is to be considered joint employment or separate and distinct employments for purposes of the Act depends upon all the facts in the particular case. If the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s) all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the Act, including the overtime provisions, with respect to the entire employment for the particular workweek. In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers.

Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) An arrangement between employers to share an employee's services. For example, two companies on the same or adjacent premises arrange to employ a janitor or watchman to perform work for both firms. Even though each entity carries the employee on its payroll for certain hours, such facts would indicate that the employee is jointly employed by both firms and both are responsible for compliance with the monetary provisions of the Act for all of the hours worked by the employee; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee. For example, employees of a temporary help company working on assignments in various establishments are considered jointly employed by the temporary help company and the establishment in which they are employed. In such a situation each individual company where the employee is assigned is jointly responsible with the temporary help company for compliance with the minimum wage requirements of the Act during the time the employee is in a particular establishment. The temporary help company would be considered responsible for the payment of proper overtime compensation to the

employee since it is through its act that the employee received the assignment which caused the overtime to be worked. Of course, if the employee worked in excess of 40 hours in any workweek for any one establishment, that employer would be jointly responsible for the proper payment of overtime as well as the proper minimum wage; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reasons of the fact that one employer controls, is controlled by, or is under common control with the other employer.

However, if all the relevant facts establish that two or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer (or employers) in determining his own responsibilities under the Act.

APPENDIX B

Regulations, Part 524 Special Minimum Wages For Handicapped Workers in Competitive Employment

WH Publication 1316

Regulations, Part 524 Special Minimum Wages For Handicapped Workers in Competitive Employment

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1316
(Revised February 1978)

This publication conforms to the Code of Federal Regulations as of January 26, 1978, the date this reprint was authorized.

PART 524—SPECIAL MINIMUM WAGES FOR HANDICAPPED WORKERS IN COMPETITIVE EMPLOYMENT

Sec.

524.1 Applicability of this part.
524.2 Definitions, as used in this part.
524.3 Application for a certificate.
524.4 Special provisions applicable to handicapped trainees.
524.5 Conditions for granting a certificate.
524.6 Additional data when required.
524.7 Issuance of a certificate.
524.8 Terms of a certificate.
524.9 Renewal of a certificate.
524.10 Records to be kept.
524.11 Review.
524.12 Issuance of certificates for experimental purposes.
524.13 Amendment of this part.

AUTHORITY: The provisions of this Part 524 issued under sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214. Interpret or apply sec. 11, 52 Stat. 1066, as amended; 29 U.S.C. 211.

SOURCE: The provisions of this Part 524 appear at 36 F.R. 50, Jan. 5, 1971, unless otherwise noted.

§ 524.1 Applicability of this part.

(a) The Fair Labor Standards Amendments of 1966 (Public Law 89-601, 80 Stat. 830), among other things, revise the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201) for the competitive employment of handicapped persons at special minimum wages. The provision is now codified at section 14 (c) of that Act. It reads in part as follows:

(c) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment, at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3) (A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(b) Paragraphs (2) (A) and (3) (A) and (B) of section 14 (c) of the Act quoted above make provision for the employment of individuals whose work is incidental to State agency certified training or evaluation programs or whose productive capacity is inconsequential. Special minimum wages for such persons, which may, when appropriate, be less than 50 per centum of the minimum wage applicable under section 6 of the Act, apply only when they are employed in sheltered workshops under certificates authorized in Part 525 of this chapter.

(c) Under this Part 524, certificates are not issued for less than 75 per centum of the statutory minimum, unless a lower rate is clearly justified, in which case the lowest rate generally that may be authorized is 50 per centum of that minimum. For the multihandicapped and other workers whose earning capacity is severely impaired (referred to in section 14 (c) (2) (B) of the Act), a wage lower than 50 per centum of the statutory

minimum (but not less than 25 per centum of that minimum) under appropriate circumstances may be authorized after certification by the State agency administering or supervising the administration of rehabilitation services. (Generally, workers with such severely impaired earning capacity are employed in sheltered workshops under certificates authorized in Part 525 of this chapter.)

[37 FR 9995, May 18, 1972; 41 FR 29378, July 16, 1976]

§ 524.2 Definitions, as used in this part.

(a) "Handicapped worker" or "worker" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform.

(b) "Handicapped trainee" or "trainee" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, and who is receiving or is scheduled to receive on-the-job training in industry under any vocational rehabilitation program administered by the Veterans Administration or an authorized vocational rehabilitation agency operating pursuant to the Vocational Rehabilitation Act, as amended.

(c) "State agency" shall mean the State agency which administers or supervises the administration of vocational rehabilitation services in any State of the United States, the District of Columbia, Puerto Rico, or the territory or possession of the United States in which the employment at special minimum wages is to occur.

(d) "Competitive employment" is employment of a handicapped worker whose earning or productive capacity would yield wages equal to at least 50 per centum of the minimum wage applicable under section 6 of the Act at wage rates which are commensurate with those for nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

§ 524.3 Application for a certificate.

(a) Application shall be made to the Regional Director of the administrative region of the Wage and Hour Division, U.S. Department of labor, in which the handicapped worker or handicapped trainee is to be employed. For Puerto Rico, the Virgin Islands, and the Canal Zone, application shall be made to the Caribbean Director in Puerto Rico. Application forms may be obtained from the appropriate Director.

(b) The application shall set forth, among other things, the nature of the disability, a description of the occupation at which the worker is to be employed, and the wage the firm proposes to guarantee the worker per hour. The nature of the disability must be set out in detail. Vague statements such as "nervous condition", "physically incapacitated", "slow worker", etc., are not sufficient.

(c) When a wage is requested which is less than 50 per centum of the minimum wage applicable under section 6 of the Act, the application shall also contain—

(1) Evidence that the individual is multihandicapped or so severely impaired that he is unable to engage in competitive employment as defined in § 524.2(d). For such workers the rate shall be not less than 25 per centum of the statutory minimum.

(2) Such application shall also be certified by the State agency defined in § 524.2(c) that the individual is a multihandicapped individual or other individual whose earning capacity is so severely impaired that he is unable to engage in competitive employment.

(d) The application shall be signed jointly by the employer and worker and be returned to the Regional or District Director by the employer.

(e) No application is required for a temporary certificate for a special minimum wage for a handicapped trainee being trained under any authorized vocational rehabilitation program. Such temporary certificates are issued in accordance with procedures set out in § 524.4.

§ 524.4 Special provisions applicable to handicapped trainees.

(a) Employment of a trainee (pursuant to the Vocational Rehabilitation Act or to a vocational rehabilitation program of the Veterans Administration for veterans with a service-incurred disability) under a temporary certificate or a special certificate shall be governed by this part as modified by this section.

(b) Temporary certificates authorizing the

than the minimum wage applicable under section 6 of the act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work may be issued whenever employment at such lower rate is necessary in order to prevent curtailment of opportunities for employment. Such temporary certificates are to be issued by duly designated representatives of State vocational rehabilitation agencies and of the Veterans Administration.

(c) A temporary certificate will designate the employer, the trainee, and the special minimum wage rate. A temporary certificate will be valid for a period not to exceed 90 days from the date of issuance and may not be issued retroactively.

(d) Within 10 days after issuance of a temporary certificate, the supervising rehabilitation agency will forward a copy of the certificate together with a recommendation covering the special minimum rates for the balance of the training period to the appropriate Director of the Wage and Hour Division, U.S. Department of Labor. Such recommendation shall not be for a wage which is less than is authorized pursuant to this § 524.4. The Regional or Caribbean Director, pursuant to this part may then issue a special certificate effective upon the expiration of the temporary certificate, or may terminate the temporary certificate prior to its expiration date, with or without issuing a superseding special certificate. If a temporary certificate is terminated prior to its expiration date without the issuance of a superseding special certificate, written notice of such a termination shall be given the employer, the trainee, and the supervising rehabilitation agency.

(e) When a special certificate authorizing a wage rate of less than 50 percentum of the minimum wage applicable under section 6 of the Act is considered necessary, the State agency or Veterans Administration may request that such certificate be issued by the Wage and Hour Division. Such a request shall be accompanied by supporting information, including certification by the State vocational rehabilitation agency that the handicapped worker is a multihandicapped individual or other handicapped individual whose earning capacity is so severely impaired that he is unable to engage in competitive employment.

(f) Money paid to the trainee by a State vocational rehabilitation agency or the Veterans' Administration for maintenance or other expenses shall not be considered as off-setting any part of the wage or other remuneration due the trainee by the employer.

(g) A temporary certificate shall not be issued for a trainee if a satisfactory training opportunity for the desired training is available in the community at the minimum wage applicable under section 6 of the Act or above.

§ 524.5 Conditions for granting a certificate.

If the application is in proper form and sets forth facts showing: (a) A special minimum wage is necessary to prevent curtailment of the worker's or trainee's opportunities for employment; and (b) the earning or productive capacity of the worker for the work he is to perform is impaired by age or physical or mental deficiency or injury, a certificate may be issued.

§ 524.6 Additional data when required.

To determine whether the facts justify the issuance of a certificate, the Administrator or his authorized representative may require the submission of additional information and may require the worker to take a medical examination.

§ 524.7 Issuance of a certificate.

(a) If the application and other available information indicate that the requirements of this part are satisfied, the Administrator or his authorized representative shall issue a certificate. Otherwise, he shall deny a certificate.

(b) If issued, copies of the certificate shall be transmitted to the employer and the worker or trainee, and, in the case of a certificate for a trainee, to the appropriate vocational rehabilitation agency. If a certificate is denied, the same parties shall be given written notice of the denial.

(c) A certificate may not be issued retroactively.

§ 524.8 Terms of a certificate.

(a) A certificate shall specify, among other things, the name of the worker or trainee, the occupation in which he is to be employed, the special minimum wage rate(s), and the period(s) of time during which such rate(s) may be paid.

(b) A certificate shall be effective for a period to be designated by the Administrator or his authorized representative. Workers or trainees may be paid special minimum wages only during the effective period of the certificate.

(c) The wage rate(s) set in the certificate shall be fixed at a figure designed to reflect adequately the individual worker's or trainee's earning or productive capacity. No wage rate shall be fixed at less than 75 per centum of the applicable minimum wage under section 6 of the Act unless after investigation a lower rate appears to be clearly justified. Such lower rate shall not be less than 50 per centum of the minimum wage applicable under section 6 of the Act, except for individuals certified by the State agency as having earning capacity so impaired that they are unable to engage in competitive employment, but in no event shall such wage rate be less than 25 per centum of the applicable minimum wage under section 6 of the Act nor less than is commensurate with wages paid nonhandicapped workers in industry in the vinicity for essentially the same type, quality, and quantity of work.

(d) In an establishment or a vicinity where nonhandicapped employees are employed at piece rates in the same occupation, the handicapped worker or trainee shall be paid at least the same piece rates. The worker or trainee must be paid his full piece rate earnings or the earnings at the hourly rate specified in the certificate, whichever is the greater.

(e) The worker or trainee shall be paid not less than one and one-half times the regular rate at which he is employed for all hours worked in excess of the maximum workweek applicable to him under section 7 of the act.

(f) No provision of this part, or of any certificate issued under this part, shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards.

(g) The terms of any certificate, including the wage rate(s) specified therein, may be amended by the Administrator or his authorized representative upon written notice to the parties concerned, if the facts justify such amendment.

§ 524.9 Renewal of a certificate.

(a) Application for renewal of any certificate shall be filed in the same manner as an original application.

(b) If an application for renewal has been properly and timely filed prior to the expiration date of a certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

§ 524.10 Records to be kept.

Every employer who employs a handicapped worker or handicapped trainee pursuant to these regulations shall keep, maintain, and have available for inspection by the Administrator or his authorized representative a copy of the certificate and all other records required under the applicable provisions of Part 516 (recordkeeping regulations) of this chapter.

§ 524.11 Review.

Any person aggrieved by an action of an authorized representative of the Administrator taken pursuant to this part may, within 15 days after such action, file with the Administrator a petition for review of the action complained of, setting forth grounds for seeking review. If such review is granted, the Administrator or an authorized representative who took no part in the action under review may, to the extent he deems it appropriate, afford other interested persons an opportunity to present data and views.

§ 524.12 Issuance of certificates for experimental purposes.

In addition to the issuance of certificates as provided in §§ 524.1 to 524.11, the Administrator may authorize the issuance of certificates to permit employment of handicapped workers at less than the applicable minimum wage un-

der section 6 of the act as part of experimental programs to increase employment opportunities for such workers. Such certificates shall be issued in such types of cases and on such terms and conditions within the scope of section 14(c) of the act as the Administrator shall determine will best further any such experimental programs.

[36 FR 50, Jan. 5, 1971; 41 FR 29378, July 16, 1976]

§ 524.13 Amendment of this part.

The Administrator may at any time upon his own motion or upon written request of any interested person setting forth reasonable ground therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of this part.

APPENDIX C

Handy Reference Guide to the Fair Labor Standards Act

WH Publication 1282

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINSTRATION
WAGE AND HOUR DIVISION
WH PUBLICATION 1282
REVISED JUNE 1987

Handy Reference Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting more than 73 million full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The Office of Personnel Management is responsible for enforcement with regard to all other Federal employees.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off in lieu of cash overtime pay.

Basic Wage Standards

Covered nonexempt workers are entitled to a minimum wage of not less than $3.35 an hour and overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular pay day for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate.

For example, FLSA does not require:

(1) vacation, holiday, severance, or sick pay;
(2) meal or rest periods, holidays off, or vacations;
(3) premium pay for weekend or holiday work;
(4) pay raises or fringe benefits;
(5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees; and,
(6) any limit on the number of hours of work for persons 16 years of age and over.

These matters are for agreement between the employer and the employees or their authorized representatives.

Who Is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and is —

(1) engaged in laundering or cleaning or repairing of clothing or fabrics; or
(2) engaged in the business of construction or reconstruction; or
(3) engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, a school for mentally or physically handicapped or gifted children, a preschool, an elementary or secondary school, or an institution of higher education (whether public or private or operated for profit or not for profit); or
(4) comprised exclusively of one or more retail or service establishments (as defined in FLSA) whose annual gross volume of sales made or business done is not less than $362,500; or
(5) any other type of enterprise having an annual gross volume of sales made or business done of not less than $250,000; or
(6) an activity of a public agency.

The dollar volume standard mentioned above in (4) and (5) excludes excise taxes at the retail level which are separately stated.

Employees of firms which are not covered enterprises under FLSA may still be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are covered if they (1) receive at least $50 in cash wages in a calendar quarter from their employers, or (2) work a total of more than 8 hours a week for one or more employers.

Tipped Employees

Tipped employees are those who customarily and regularly receive more than $30 a month in tips.

The employer may consider tips as part of wages, but such a wage credit must not exceed 40 percent of the minimum wage.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Employer-Furnished Facilities

The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages.

Subminimum Wage Provisions

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by age or physical or mental deficiency or injury. Employment at less than the minimum wage is provided for in order to prevent the curtailment of opportunities for employment. Such employment is permitted only under certificates issued by Wage-Hour.

Exemptions

Some employees are excluded from the overtime pay provisions or both the minimum wage and overtime pay provisions by specific exemptions.

Because exemptions are generally narrowly defined under FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local Wage-Hour offices. Following are examples which are illustrative but do not spell out the conditions for each exemption.

Exemptions from Both Minimum Wage and Overtime Pay

(1) Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), and outside sales persons (as defined in Department of Labor regulations);
(2) Employees of certain individually owned and operated small retail or service establishments not part of a covered enterprise;
(3) Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, switchboard operators of small telephone companies, seamen employed on foreign vessels, and employees engaged in fishing operations;
(4) Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year;
(5) Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Provisions Only

(1) Certain highly-paid commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks, or farm implements, and who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;
(2) Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;

(3) Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;
(4) Domestic service workers residing in the employers' residences;
(5) Employees of motion picture theaters; and
(6) Farmworkers.

Partial Exemptions from Overtime Pay

(1) Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors.
(2) Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period in lieu of the usual 7-day workweek, if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.

Child Labor Provisions

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and nonfarm jobs declared by the Secretary of Labor as being too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Nonagricultural Jobs

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible jobs and hours of work, by age, are as follows:

(1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
(2) Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
(3) Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours.)

Fourteen is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely-owned nonfarm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.

Farm Jobs

In farm work, permissible jobs and hours of work, by age, are as follows:

(1) Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;
(2) Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;
(3) Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with parent's written consent or on the same farm as the parents;

(4) Youths under 12 years old may perform jobs on farms owned or operated by parents or, with parents' written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to both minimum wage and overtime pay provisions, the following records must be kept:

(1) personal information, including employee's name, home address, occupation, sex, and birth date (if under 19 years of age);
(2) hour and day when workweek begins;
(3) total hours worked each workday and each workweek;
(4) total daily or weekly straight-time earnings;
(5) regular hourly pay rate for any week when overtime is worked;
(6) total overtime pay for the workweek;
(7) deductions from or additions to wages;
(8) total wages paid each pay period; and
(9) date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers and special information is required for homeworkers, for employees working under uncommon pay arrangements, or for employees to whom lodging or other facilities are furnished.

Terms Used in FLSA

Workweek — A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked — Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is suffered or permitted to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (excluding certain statutory exceptions). The following examples are based on a maximum 40-hour workweek.

(1) ***Hourly rate*** — (regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid $3.80 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times $3.80, or $5.70, for each hour over 40. Pay for the week would be $152 for the first 40 hours, plus $22.80 for the four hours of overtime—a total of $174.80.

(2) ***Piece rate*** — The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in the same week. The employee is entitled to an additional one-half

times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employee paid on a piecework basis works 45 hours in a week and earns $162. The regular rate of pay for that week is $162 divided by 45, or $3.60 an hour. In addition to the straight-time pay, the employee is entitled to $1.80 (half the regular rate) for each hour over 40.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during overtime hours.

The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

(3) ***Salary*** — the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid $200 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is $4 ($200 divided by 50 hours). In addition to the salary, half the regular rate, or $2 is due for each of the 10 overtime hours, for a total of $220 for the week. If the employee works 54 hours, the regular rate will be $3.70 ($200 divided by 54). In that case, an additional $1.85 is due for each of the 14 overtime hours, for a total of $225.90 for the week. In no case may be regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

Wage-Hour's enforcement of FLSA is carried out by compliance officers stationed across the U.S. As Wage-Hour's authorized representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with FLSA. Where violations are found, they also may recommend changes in employment practices, in order to bring an employer into compliance with FLSA.

It is a violation of FLSA to fire or in any other manner discriminate against an employee for filing a compliant or for participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to $10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to $1,000 for each violation.

Recovery of Back Wages

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime wages.

(1) Wage-Hour may supervise payment of back wages.
(2) The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
(3) An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
(4) The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a 3-year statute applies.

Other Labor Laws

In addition to FLSA, Wage-Hour enforces and administers a number of other labor laws. Among these are:

(1) the Davis-Bacon and Related Acts (require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction);
(2) the Walsh-Healey Public Contracts Act (requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal government);
(3) the Service Contract Act (requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal government);
(4) the Contract Work Hours and Safety Standards Act (sets overtime standards for Federal service and construction contracts);
(5) the Immigration Reform and Control Act (Wage-Hour is authorized to review the Immigration and Naturalization Service forms (I-9) required under the Immigration Reform and Control Act; employers must verify the employment eligibility of all individuals hired after November 6, 1986, and must keep I-9s on file for at least 3 years and for one year after an employee is terminated);
(6) the Migrant and Seasonal Agricultural Worker Protection Act (protects farm workers by imposing certain requirements on agricultural employers and associations; and by requiring the registration of crewleaders who must also provide the same worker protections); and
(7) the Wage Garnishment Law (limits amount of an individual's income that may be legally garnisheed and prohibits the firing of an employee whose pay is garnisheed for payment of a single debt).

More detailed information on FLSA and other laws administered by Wage-Hour is available from local Wage-Hour offices, which are listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration, Wage and Hour Division.

Equal Pay Provisions

The equal pay provisions of FLSA prohibit wage differentials based on sex, between men and women employed in the same establishment, on jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available from its offices which are listed in most telephone directories under U.S. Government.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1987 202-109/74407

APPENDIX D

A Guide to Idaho Labor Laws

WH-221
1-88r

A G U I D E T O

I D A H O L A B O R L A W S

State Of Idaho
Department of Labor and Industrial Services
Safety and Labor Relations Section
Wage and Hour Unit
Statehouse Mail
Boise, ID 83720
(208) 334-2327

State of Idaho
Department of Labor and Industrial Services
Safety and Labor Relations Section
Wage and Hour Unit

GARY H. GOULD
Director

DAVID D. DUTHIE
Deputy Director

JOHN C. CROLY
Safety and Labor Relations Supervisor

AREA OFFICES

Boise Area Office

Kenneth R. Flatt
Ronald C. Ostrom
Labor Compliance Officers
277 North 6th Street
Statehouse Mail
Boise, ID 83720

Telephone: 334-2327

Area Covered: Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, and Washington Counties.

Pocatello Area Office

Frank W. Roeckner

Labor Compliance Officer
307 East Lewis
P.O. Box 4963
Pocatello, ID 83205-4963

Telephone: 232-5451

Area Covered: Bannock, Bear Lake, Bingham, Bonneville, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, and Power Counties.

Twin Falls Area

Claims handled by the Pocatello Area Office

Area Covered: Blaine, Butte, Camas, Cassia, Custer, Gooding, Jerome, Lemhi, Lincoln, Minidoka, and Twin Falls Counties.

Coeur d'Alene Area Office

William O'Donnell
Labor Compliance Office
202 Anton Avenue
Coeur d'Alene, ID 83814

Telephone: 765-5579

Area Covered: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

A GUIDE TO IDAHO LABOR LAWS

WAGE STANDARDS

Covered non-exempt workers are entitled to a minimum wage of not less than:

$2.30 Per Hour--Beginning July 1, 1977

Idaho Law does not require overtime. Extra hours worked can be paid at straight time.

WHO IS EXEMPT FROM THE IDAHO MINIMUM WAGE LAW?

The provisions of this law shall not apply to any employee employed in a bona fide executive, administrative, or professional capacity; to agricultural labor as that term is defined in Idaho Code 72-1304; to anyone engaged in domestic service; to any individual employed as an outside salesman; to seasonal employees of a nonprofit camping program, or to any child under the age of 16 working part-time or at odd jobs not exceeding 4 hours per day with any one employer.

Contrary to some beliefs, all wage earners of Idaho come under Idaho Code 44-1501 through 44-1509, except as mentioned in the "exempt" section. However, the Federal "Fair Labor Standard Act" requires that the minimum wage be $3.35 per hour effective January 1, 1981. There are certain criteria that allows an employer to come under the Fair Labor Standard Act.

Although the State of Idaho does not have an overtime law, the Federal "Fair Labor Standard Act" does have such a law.

If there are any complaints concerning the above issues, they should be addressed to the U. S. Department of Labor at one of the following telephone numbers:

(208) 334-1029 (Boise)
(208) 523-5142 (Idaho Falls)
(503) 221-3057 (Portland, Oregon)
(206) 442-4482 (Seattle, Washington)

SUB-MINIMUM WAGE PROVISIONS

Learners and handicapped workers may, under certain circumstances, be paid less than the minimum wage by authority of Idaho Code 44-1505 and 44-1506. Employers shall make application to the Department of Labor and Industrial Services for special permits issued under these sections.

By authority of IDAPA 07.02.01.01.102.h.i-ii(a)-(f) of the Rules and Regulations of the Department of Labor and Industrial Services, trainees and student-trainees may work for their own advantage on the premises of another without the requirement of any wages being paid for such services if all six of the following criteria are met:

1. the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school (such programs shall be submitted to the Department of Labor and Industrial Services for prior approval and such training shall not include unskilled or semi-skilled jobs);

2. the training is for the benefit of the trainees or students;

3. the trainees or students do not displace regular employees but work under their close observation;

4. the employer who provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded;

5. the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and,

6. the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

IDAHO LAW DOES NOT REQUIRE:

--- vacation, holiday, severance, or sick pay;
--- a discharge notice or reason for discharge;
--- rest periods, breaks, holidays off, or vacations;
--- premium pay rates for weekend or holiday work;
--- pay raises or fringe benefits;
-- a limit on hours of work for employees 16 years of age or older.

These are matters for agreement between the employer and the employees or their authorized representatives. However, if an employer does agree to provide benefits to its employees, that agreement may be enforceable through the Department. If there is any change in policy, the employee must be notified prior to the change, and benefits already earned or accrued cannot be taken away.

TIPPED EMPLOYEES

Tips and gratuities cannot be considered to be part of wages by definition of Idaho Code 44-1503. Under Idaho law, employees who regularly and customarily receive tips must be paid no less than $2.30 per hour over and above any tips received. Thus, even if an employer falls under the Federal law and is entitled to claim a tip credit, the actual wage shall not be less than $2.30 per hour.

UNIFORMS

When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of a distinctive design or color. (A deposit may be required to ensure the return of such uniforms to the employer upon termination of employment, at which time such deposit must be refunded to the employee.) [IDAPA 07.02.01.01.102.h., Rules and Regulations of the Department of Labor and Industrial Services]

EMPLOYER-FURNISHED FACILITIES

In defining and governing deductions and allowances for the reasonable value of board and lodging:

"Board" shall mean food furnished in the form of meals on a regularly established schedule.

"Lodging" shall mean housing facilities (available to him or her at all hours of the day) wherein the employee sleeps, rests, and may store his or her clothing and personal belongings as hereinafter set forth, provided such board, lodging, or other facilities are customarily furnished by such employer to his or her employees and used by the employees and provided further that such condition is made known to and accepted by the employee at the time of hire.

Cash value of board and room:

-A-

Full board and room, weekly	$60.00
Meals per week	40.00
Meals per day	2.00
Lodging per week	20.00
Lodging per day	3.00

-B-

In the case of restaurant employees (cooks, waiters, waitresses, kitchen helpers, and miscellaneous help) the valuation to be placed on meals shall be as follows:

Meals per day (or any part thereof)	$ 1.50
Meals per 6-day week	9.00
Meals per 7-day week	10.50

In determining the value to be placed on lodging for said hotel- and restaurant employees, the cash value as set out in "A" on the previous page shall be used.

WAGE PAYMENT LAW

Idaho Code 45-609 through 45-613 requires payment of wages as follows:

1. Employers must designate regular scheduled paydays at least once during each calendar month.

2. Payment must be made in lawful money of the United States or with checks on banks where suitable arrangements are made for cashing.

3. The end of the pay period for which payment is made on a regular payday shall be not more than seven (7) days before such regular payday, provided that if the regular payday falls on a non-workday, payment shall be made on a preceding workday.

4. The Director of the Department of Labor and Industrial Services may, upon receiving the employer's application showing good and sufficient reasons, permit an employer to withhold payment of wages for more than the seven-day period.

5. Every employer shall furnish each employee with an itemized statement of deductions for each pay period such deductions are made.

6. No part of an employee's wages may be withheld unless:

   (a) the employer is required or empowered to do so by state or federal law, or

   (b) the employer has written authorization by the employee for deductions for a lawful purpose.

"Deductions for a lawful purpose" as used in item 6(b) above shall mean deductions made for the benefit or convenience of the employee, i.e., insurance premiums, payments to a qualified pension plan, union dues, voluntary contributions, payments to a credit union, or deductions made pursuant to a savings or bond purchase plan.

No employer shall make any deductions from the wages of, or require any refund from, an employee for any cash shortage, breakage, or loss of equipment or merchandise, unless it can be shown that the shortage, breakage, or loss is caused by the dishonest or willful act or by the culpable negligence of the employee and the employer can also show that he has the written authorization of the employee for such a deduction.

PENALTIES

Idaho Code 45-606, provides as follows:

Whenever any employer of labor shall hereafter discharge or lay off his or its employees without paying them the amount of any wages or salary then due them within 48 hours after the discharge or layoff, in cash, lawful money of the United States, or its equivalent, or shall fail or refuse on demand to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing to them under their contract of employment, whether employed by the hour, day, week, or month, each of his or its employees may charge and collect wages in the sum agreed upon in the contract of employment for each day his employer is in default until he is paid in full, without rendering any service therefor; provided, however, he shall cease to draw such wages or salary 30 days after such default.

The Director of the Department of Labor and Industrial Services may, upon application showing good and sufficient reasons, grant an employer an extension of the 48-hour period provided in this section.

The Department will accept claims for such penalties for failure to pay within 48 hours of the time of termination, up to a total of $1,000 for both unpaid wages and the penalties.

DISCRIMINATORY WAGE RATES BASED UPON SEX--IDAHO CODE TITLE 44, CHAPTER 17:

Complaints based on sex discrimination can be filed with the Idaho Human Rights Commission.

AGE DISCRIMINATION: TITLE 44, CHAPTER 16 REPEALED--SEE IDAHO CODE TITLE 67, CHAPTER 59.

Complaints based on age discrimination can be filed with the Idaho Human Rights Commission.

RECOVERY OF BACK WAGES

An employee may file a complaint with the Department of Labor and Industrial Services for recovery of back wages. Claims filed with the Department are limited to $1,000 for each employee [Idaho Code 45-615(1)].

Whenever the Director of the Department determines that an employee has a claim for wages he may, upon the written consent of the employee, take an assignment of the claim in trust and may maintain any proceeding appropriate to enforce the claim, including additional fixed damages.

Any judgment for the employee in a proceeding pursuant to the Wage Collection Law shall include all costs reasonably incurred in connection with the proceedings, and the employee shall be entitled to recover from the employer, as damages, three (3) times the amount of unpaid wages found due and owing.

WAGE CLAIM PROCEDURE

The following is an explanation of the wage claim procedure and an explanation of the approximate period of time that each step in the procedure will take:

15 DAYS: Filing Procedures--An employee who is denied full payment of wages due and owing by an employer may file a wage claim with the Department on a form provided for that purpose. The completed claim shall be accompanied by copies of all documents which the employee wishes to have considered in support of his claim. Upon receipt of the completed wage claim by the Department, the employer's copy and copies of the documents, if any, submitted by the employee, together with a blank employer answer form and a letter of instruction, will be sent by regular mail to the employer's last known address. The employer shall have 15 days from the date of the postmark to answer such claim and such answer shall be accompanied by copies of all documents which the employer wishes to have considered in support of its answer.

The Department may thereafter issue a Predetermination based on the statements in the claim, employer answer, and any documents submitted by either party. Such Predetermination shall be sent to the parties in the same manner as other Determinations and shall indicate that if either party is not satisfied with the Predetermination they have the right to request a hearing on the claim.

10 Days: If no hearing is requested within 10 days of the date of the postmark of the Determination, such Determination shall become final.

15 DAYS: The Department may also, in lieu of such Determination, prior to hearing, forward a copy of the employer's answer to the employee, together with a letter of instruction. The employee shall have 15 calendar days from the date of the postmark to accept such answer as final or to request an investigatory hearing.

In all cases where an employer's answer is not received within the time limit stated, and no Determination is issued prior to hearing, the employee will be notified by regular mail that he must notify the Department in writing if he desires the Department to schedule a hearing dealing with the wage claim.

The purpose of the hearing is to determine the merits of the claim.

Under the provisions of IDAPA 07.02.01.01.I (907e), all costs incurred by reasons of any party's non-appearance may be assessed against such non-appearing party, and no proceeding or action shall be entertained on behalf of the non-appearing party by the Department until such assessed costs are paid. An assessed cost can be as high as $200.00 and can be processed through any competent court of jurisdiction.

10 DAYS MINIMUM: A minimum of 10 days is required by law to notify both parties of the time and place set for the hearing. At the sole discretion of the Department, hearings may be conducted by telephone. The hearing notice shall specify how the hearing is to be conducted. If either party to the proceeding has documents which it wishes to have considered at the hearing, it shall provide the original of such document to the Department at least seven days prior to the hearing. Any documents that are submitted to the Department must also be submitted to the opposing party. Each party is responsible for his or her document distribution. The hearing officer shall rule on the admission of such documents, setting a time and place, or for production of documents, setting a time and place for production of the documents prior to the hearing.

14 DAYS: After the Determination is made, both parties have 10 days from the postmark to appeal the decision. The Department allows 14 days, which includes mail time. If there is an appeal, the time frame will be considerably longer if a rehearing is granted for either party.

14 DAYS: If the award is made in favor of the employee and the employer does not pay, and the appeal time has expired, the wage claim will be turned over to the Department's Special Deputy Attorney General who will send a letter of demand, demanding the wages and informing the employer of the legal action that will be taken if we do not receive payment of the wages within 10 days of the date of the letter; the 14 days include mail time.

14 DAYS: If the employer does not, within 14 days, pay the wages due based on the letter of demand, our attorney will file a complaint in the court and request the issuance of a Summons. Preparation of the paperwork by the office and the issuance of the papers by the Clerk of the Court can take as long as 14 days. The papers are generally filed and issued by the Clerk of the Court in the county where the employer resides.

30-45 DAYS: Once we receive the Summons back from the Clerk of the Court, the original and copies of the Summons and Complaint are forwarded to the county sheriff, of the county where the employer resides, to be served. The location of the employer and service of the paper can take as long as 30 to 45 days or more, under normal circumstances.

Once the papers have been served, the employer has, as in any civil action, 20 days to file with the court a formal response to the Civil Complaint.

If the employer files a response, the Department's attorney will keep you informed of the status of your claim and what steps are being taken to resolve your claim.

25 DAYS: If the employer does not file a formal response to the Complaint with 20 days of being served with the papers, this office will prepare and send papers to the Clerk of the Court requesting the Court to grant a judgment against the employer of three times the amount of the wages (based on the Determination). This is called a "treble damage" judgment. Note: Judgments on claims for penalties under Idaho Code 45-606, are for single damages (the amount awarded on the Determination).

14 DAYS: The process of receiving the judgment from the court can take 14 days or more. These papers are reviewed and signed by the judge assigned to the case.

14 DAYS: Once we have received the judgment, we will then submit a Writ of Execution to the court for issuance. This document will be sent from our office to the sheriff for execution. This document gives the sheriff's office the authority to attach assets belonging to the employer to satisfy the judgment.

The judgment is valid and enforceable for five years from the date of issue and can be satisfied any time during that period.

10 DAYS: If at any time during the wage collection process we receive payment of the employee's wages, if the same is made by check, we are required to submit it to the State Auditor's Office who will then send the check through the employer's account. Once we have been notified by the Auditor's Office that the check is valid, or if cash has been paid, we will then instruct the

Auditor's office to issue a state check in the employee's name. This process can take as long as 10 additional days. When we have received the state check in the employee's name and have received signed receipts from the employee, the money will be disbursed. These two items cannot be altered. We are required to submit payments made by employers to the Auditor's Office. There are numerous reasons for this, with the primary one being the establishment of an audit trail for future audits of the Department.

There are many items which can affect the time-frames presented. Some of those items are whether or not the employer disputes the employee's claim; whether or not we are able to locate the employer for service of papers, notice of our claim, and/or notice of the administrative hearing; whether or not settlement proceedings are instigated by either party; and whether or not the employee's claim went to judgment.

If the employer needs to be located, it is the employee's responsibility to provide information on the employer's whereabouts. The Department does not have the investigative personnel to provide this service.

NOTE: There is no immediate payment through the Department of Labor and Industrial Services. We are obligated by statute to follow due process of law, as outlined in Idaho Code Title 45, Chapter 6.

If the employee does not wish to use the services of this Department, he or she can seek to recover wages either through Small Claims Court, if the employee qualifies, or through the court system with an attorney, or on the employee's own, if he or she feels comfortable in doing so.

ADDITIONAL INFORMATION

Child Labor Laws--Local Truant Officer
Superintendent of Schools
U. S. Wage and Hour
Boise telephone number: 334-1029
Idaho Falls telephone number: 523-5142

Other Idaho labor laws affecting the rights of employers and employees: Human Rights Commission, telephone number 334-2873.

COMPLIANCE WITH THESE LAWS DOES NOT EXCUSE NON-COMPLIANCE WITH OTHER FEDERAL OR STATE LAWS OR LOCAL ORDINANCES WHICH ESTABLISH HIGHER OR MORE RESTRICTIVE STANDARDS.

If you have any questions concerning the information in this pamphlet, please feel free to contact the Department of Labor and Industrial Services at any of the Area Offices.

APPENDIX E

Form 9010 and Form WH 222

Form for Measuring Worker Productivity and Application for Handicapped Worker Certificate

FORM 9010

RATING FORM FOR MEASURING PRODUCTIVITY OF HANDICAPPED WORKER PAID AT HOURLY RATE

(Worker is to be rated at least once every 6 months)

Name of Worker		Job	
Period of Rating	From Through	Date of Employment	Rater

HOW TO DETERMINE RATING

Enter for each factor below the numerical rating which reflects the handicapped worker's performance as compared with the performance that would be expected of an average nonhandicapped worker. The level for nonhandicapped workers should be considered as 100 percent.

Rating Groups		0 - 20%	21 - 40%	41 - 60%	61 - 80%	81 - 99%	100%
Factors Rated	Weight of Factor	Generally Unacceptable	Far Below Average Standards for Industry	Well Below Average Standards for Industry	Significantly Below Average Standards for Industry	Approaches Average Standards for Industry	Meets Average Standards for Industry
Quantity of Work	90%						
Quality of Work	10%						

COMPUTATION OF RATED WAGE

(A) .90* X Rating for Quantity of Work = _____ (B) .10* X Rating for Quality of Work = _____

(C) Total of (A) + (B) Above = _____ (D) Prevailing Industry Wage** for Job Rated = _____

(E) Product of (C) X (D) Above = _____ (Rated Wage)

*These figures are decimilized expressions of the weights 90% and 10% respectively.

**Prevailing Industry Wage is the hourly wage paid average nonhandicapped workers in industry in the vicinity for essentially the same type of work.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

EMPLOYMENT STANDARDS ADMINISTRATION
4097 FEDERAL OFFICE BUILDING
909 FIRST AVENUE
SEATTLE, WASHINGTON 98174

Form Approved
OMB No. 44-R0123

FOR AGENCY USE ONLY			
AGE ☐	ORIGINAL ☐		
OTHER ☐	RENEWAL ☐		
WH-242 on file ☐	DENIED ☐		
RATE	FROM	TO	

APPLICATION FOR HANDICAPPED WORKER CERTIFICATE

INSTRUCTIONS: ALL ITEMS SHOULD BE COMPLETED.

a. This is an APPLICATION FORM ONLY (not a permit or certificate) used in applying for a subminimum wage certificate for a handicapped worker under the Fair Labor Standards Act, Walsh-Healey Public Contracts Act, and/or Service Contract Act (SCA). If the worker will be employed on an SCA contract of more than $2,500, supply on a separate sheet of paper attached to this application: Name of the prime contractor, contract number, dates of award and expiration, amount of the contract, applicable SCA wage determinations (including fringe benefits), type of service to be performed, and governmental agency name and location for which the service contract will be performed.

b. Four copies of this form are to be completed and then signed by both the employer and the handicapped worker. The employer should send the original and one copy of the completed form to the address shown above, give one copy to the worker, and keep one for his/her own files.

INFORMATION ABOUT EMPLOYER

1 Name of firm	2 Date of application

3a Address, including ZIP Code, of establishment where worker will be employed	3b. Area Code and Telephone Number

4 (a) Type of business _____
(Examples: retailing, wholesaling, manufacturing, processing, miscellaneous business services, etc.)

(b) Type of products or services _____
(Examples: men's and boys' clothing, seafood, hosiery, cigars, mail advertising, etc.)

INFORMATION ABOUT HANDICAPPED WORKER

5 Name of worker Mr. Mrs. Miss	6 Date of birth	7. How long employed by firm?	8 How long at present job?

9 Home address, including ZIP Code, of worker

10 Amount firm proposes to guarantee worker in:

(a) Cash _____ per hour

(b) Reasonable cost of lodging, board or other facilities, if furnished _____ per hour *(See Reg., 29 CFR Part 531)*

(c) How long has proposed rate been in effect for this worker? _____

11 Occupation in which worker is to be employed (Describe if job title is not self-explanatory)

12 Nature of worker's disability:

(a) Describe in FULL. (Do not use vague statements such as "nervous," "slow," etc.)

(b) Obvious ☐ Not obvious ☐ (Check one.)

(If disability is not obvious, a Report of Medical Examination Form WH-242 should be completed by a physician and accompany this application. For a renewal application, submit Form WH-242 only when requested.)

(OVER - THE REVERSE SIDE OF THIS FORM MUST BE COMPLETED)

Form WH-222 (Rev. Jan. 1975)

INFORMATION ABOUT EARNINGS

Note: The information requested below must be properly completed to determine the certificate rate. Action cannot be taken on this application unless all the requested information is furnished.

13 (a) NONHANDICAPPED employees in establishment during most recent week doing same type of work as described under Item 11

(1) NUMBER OF SUCH EMPLOYEES (If none, so state)	(2) STRAIGHT-TIME AVERAGE HOURLY EARNINGS (Excluding make-up)		(3) NUMBER PAID MAKE-UP TO EQUAL STATUTORY MINIMUM (If none, so state)	(4) AVERAGE MAKE-UP PER HOUR (Divide total make-up by total hours worked by employees paid make-up)
	Time work	Piece work		

(b) If the make-up paid reported in 13(a)(3) and 13(a)(4) above is the result of unusual circumstances, explain.

14 Handicapped worker's earnings for most recent 4 weeks he or she worked for the employer.

(a) WEEK ENDING (Date)	(b) HOURS WORKED (Total for week)	(c) STRAIGHT-TIME AVERAGE HOURLY EARNINGS (Excluding make-up)		(d) MAKE-UP PAY (Total for week added to equal authorized minimum. If none, so state.)	(e) OVERTIME PAY (Total paid for week over and above straight-time earnings)	(f) WEEKLY EARNINGS (Total gross earnings for week)
		Time work	Piece work			

15 If worker has been employed during the above 4 weeks in an occupation other than that described in Item 11, specify occupation.

SIGNATURES OF EMPLOYER AND HANDICAPPED WORKER

16 I certify that to the best of my knowledge and belief all statements are true and accurate	Signature of employer or authorized official	17 Print or type name and official title
18 I have read the statements in this application and ask that the requested certificate be granted	Signature of handicapped worker *(If worker cannot write, signature may be made by mark (X) and witnessed by another person.)*	
19 Witness *(Required ONLY if worker's signature is made by mark (X))*	Signature of witness	

DO NOT WRITE IN THIS SPACE - FOR AGENCY USE ONLY

☆ U.S. GOVERNMENT PRINTING OFFICE: 1976-621-738/5933